

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RATE AND SERVICE CHANGES TO IMPLEMENT)
BASELINE NEGOTIATED SERVICE AGREEMENT) Docket No. MC2006-3
WITH WASHINGTON MUTUAL BANK)

VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
OBJECTIONS TO UNITED STATES POSTAL SERVICE
PROPOSAL TO LIMIT ISSUES
(April 24, 2006)

The Postal Service filed its Proposal for Limitation of Issues on March 29, 2006, concurrently with the filing of its Request seeking a recommended decision herein.

(1) Clearly, the Postal Service's proposal is premature, and attempts to preclude inquiry into matters that may be important in the resolution of this case. Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. (jointly, "Valpak") submit that certain issues treated by the Postal Service as resolved are not resolved for the purposes of this case, and hereby oppose the narrowing of issues to only those set out by the Postal Service. (2) The Postal Service's proposal appears to confuse the "key" issues in this baseline NSA docket with those that the Commission's Rules state are relevant to every functionally equivalent NSA docket. *See* Commission Rule 196(a)(6). (3) Finally, the Postal Service would eliminate, unfairly, other substantive issues that could be of importance as the Commission considers this matter.

The Postal Service is being extremely aggressive in attempting to shut down discovery, seeking exclusion of all other issues as having been "well-established." However, nothing is all that well-established with respect to Baseline NSAs, as this is only the third such NSA, and

only the second under current PRC rules. This particularly applies to three of the issues identified by the Postal Service as conclusively determined as general principles, rather than being determined in the context of a particular NSA proposal (e.g. numbers 2-4, USPS Motion, p. 1). *See* Capital One, Docket No. MC2002-2; and Bookspan NSA, Docket No. MC2005-3, which is still pending. As one illustration of why discovery should not be so limited, Commission Rules provide that each baseline NSA provide a “written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification” (Rule 195(a)(1)). This would be an issue on which discovery apparently would be prohibited if the Postal Service’s proposal for limitation were approved.

At this point, it is unclear whether the Postal Service’s request meets the explicit requirements of Rule 195(a). Approval of the Postal Service’s proposal for limitation of issues would put participants in this docket in the illogical position of requiring discovery to develop fully an understanding of the Postal Service’s request, but being precluded from it.

Additionally, just last Friday, the Commission issued its Opinion and Further Recommended Decision in Docket No. MC2004-3 (Bank One Corporation) generally dealing with NSAs without a stop loss provision. That Opinion has applicability to the instant proposal, and could require discovery on additional issues, although we are insufficiently familiar with last Friday’s Opinion to be able to speak to this further at this point.

At this very early stage of the litigation, Valpak identifies the following factual issues for exploration on written discovery, or, if necessary, during a hearing:

1. Financial effect on Postal Service and other mailers from the proposed NSA.
2. Implications of omitting the requirement of new volume.

3. Impact on Postal Service of mailer conversion from Standard Mail to First-Class under the proposed NSA.
4. Impact of proposals by the Postal Service in the omnibus rate case soon to be filed relating to Undeliverable as Addressed (UAA) Mail.
5. Changes in Standard Regular rates vis-a-vis First-Class rates in the omnibus rate case soon to be filed.
6. Identification of who would be a similarly situated mailer to this Baseline NSA under a subsequent functionally-equivalent NSA.

It is impossible to know if a hearing would be required at this stage, until responses to discovery are reviewed. Initial Valpak discovery is being prepared and at least some discovery will be filed this week.

Respectfully submitted,

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